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**Meeting of States Parties**
**Twelfth Meeting**
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# Budgetary matters of the International Tribunal for the Law of the Sea

## Proposed staff assessment fund

## Working paper prepared by the Tribunal

1. Article 18, paragraph 8, of the Statute of the Tribunal[1] concerning the remuneration of Members of the Tribunal provides that "the salaries, allowances, and compensation shall be free of all taxation".

2. Equally, article 11, paragraph 1, of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea[2] provides that "the salaries, emoluments and allowance paid to Members and officials of the Tribunal shall be exempt from taxation."

3. However, certain States do not exempt their citizens from tax liability on earnings from international organizations, including those of the Tribunal.

4. In order to address the situation of staff members who might be required to pay taxes in respect of salaries they receive from the Tribunal, the Staff Regulations of the Tribunal,[3] in regulation 3.3, paragraph (f), provide as follows:

> "Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the Tribunal, the Registrar is authorized to refund to him or her the amount of staff assessment collected from him or her ..."

5. The purpose of this mechanism is to place staff members subject to taxation in the position they would have been in if their official emoluments were not taxed.

6. In order to deduct staff assessment from salaries and reimburse Members and officials of the Tribunal who are subject to income tax, the Tribunal has maintained a Staff Assessment Account since 1996. Payments by staff members to the account are made monthly and have accumulated a total net credit of US$ 1,595,133 as at 31 December 2001. Actual reimbursements to staff members in respect of tax reimbursements have totalled $37,676 as at 31 December 2001 and have been charged against the Staff Assessment Account. No Member of the Tribunal has so far claimed any reimbursement from the Tribunal.

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7. In this respect, it may be noted that the United Nations Financial Rules ("the Tax Equalization Fund") would not provide an adequate solution in the case of the Tribunal for the following reasons:

- Within the United Nations, the Tax Equalization Fund was established to reimburse staff members for taxes levied by Member States. In the case of the Tribunal, there is currently no tax levied by a State Party to the Convention with respect to emoluments of officials or Members of the Tribunal;
- The mechanism would not enable the Tribunal to reimburse taxes levied by a State which is not party to the Convention;
- The mechanism would create an extra administrative burden on the Tribunal since it would require that sub-accounts be maintained for each individual State Party;
- The mechanism would require States Parties to contribute to the gross salary of staff members, thereby increasing the financial burden of States Parties.

8. An effective mechanism for dealing with the staff assessment issue could be to create a fund which would utilize the balance currently held and would also earn interest.

9. The purpose of such a fund would be to reimburse officials and Members of the Tribunal for taxes paid in respect of their emoluments while also providing financial resources for the contingent liability of the Tribunal (payment of compensatory time, annual leave and repatriation grant upon termination of employment, liability of the Tribunal with respect to successful applications brought before the United Nations Administrative Tribunal).

10. If this option were to be adopted, there would be a decrease in the recurrent expenditure shown in the annual budget of the Tribunal of approximately $500,000, since the budget would be calculated on the basis of the net salary of staff members of the Tribunal. This would also avoid the administrative burden of maintaining sub-accounts for individual States Parties.

11. In principle, such a fund would be self-sustaining. However, depending on the liability incurred by the Tribunal, this would not exclude the possibility of the Tribunal seeking further contributions from the States Parties from time to time.

12. The Meeting of States Parties may wish to consider whether the option of creating a staff assessment fund would meet with its approval. If this option were to be chosen, the Tribunal would prepare a detailed proposal for the consideration of the Meeting of States Parties in 2003. Pending the adoption of a decision by the Meeting of States Parties, the Tribunal would request to be authorized to continue with the current practice.

*Notes*

[1] United Nations Convention on the Law of the Sea, annex VI.

[2] SPLOS/25.

[3] SPLOS/37.